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Via e-filing

December 28, 2009

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

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DEC 28 2009
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Public Record

**Re: Finance Docket No. 35331, Sierra Northern Railway – Lease and Operation
Exemption – Union Pacific Railroad Company**

Dear Ms. Brown:

On December 23, 2009, CEMEX, Inc. ("CEMEX") filed a Motion to Hold Notice of Exemption in Abeyance ("Motion") in this docket in response to the proposal of Sierra Northern Railway ("SERA") to lease and operate approximately 31 miles of rail line from the Union Pacific Railroad Company. In the Motion, CEMEX expressed its concern about numerous parts of the proposed transaction, including the relationship between SERA's proposal and a long-planned acquisition of the same line by the Santa Cruz County Regional Transportation Commission ("RTC"). CEMEX also is concerned about freight service on the line given the possible alternative uses of the rail corridor by RTC and/or SERA.

SERA filed an Opposition to CEMEX's Motion on December 28, 2009. SERA stated that approximately \$100,000 in tax credits would be lost if the proposed transaction does not become effective on December 31, 2009. According to SERA, this tax credit would be "invest[ed] in the line". SERA also emphasized that freight service would be given priority over other uses of the rail corridor.

At the time CEMEX filed its Motion, it was unaware that a tax credit for investment in the line was dependent on a December 31st effective date for the proposed transaction. While there are still many unanswered questions, CEMEX does not wish to stand in the way of this tax credit that SERA claims it will use for the line. Hence, CEMEX does not oppose the transaction going forward as described in SERA's Notice of Exemption as long as the Surface Transportation Board maintains oversight of SERA's lease and operations and reminds the parties that the common carrier obligation for freight service can only be terminated by order of the Board. As SERA acknowledges, the Notice of Exemption can be declared void *ab initio* at any time under 49 USC § 10502 and 49 CFR § 1150.42(c) if it contains false or misleading information.

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If there are any questions regarding this matter, please do not hesitate to contact the undersigned counsel for CEMEX, Inc.

Sincerely,



Sandra L. Brown
Attorney for CEMEX, Inc.

cc: David Magaw, Sierra Northern Railway (via e-mail)
Regional Transportation Commission of Santa Cruz County
Union Pacific Railroad Company